

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

In re:

Request of Cellular Communications of  
Puerto Rico, Inc. to Hold an Auction  
to License Cellular RSA No. 727A,  
Ceiba, Puerto Rico

RM-8897

To: The Commission

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OFFICE OF SECRETARY

**OPPOSITION TO MOTION TO STRIKE REPLY COMMENTS  
AND REQUEST FOR SANCTIONS AGAINST THE RSA OPERATORS GROUP**

Cellular Communications of Puerto Rico, Inc. ("CCPR"), by its attorney, hereby opposes the Motion to Strike Reply Comments of Cellular Communications of Puerto Rico filed by the RSA Operators Group ("RSAOG") in the above-captioned proceeding. RSAOG's argument that CCPR's reply comments constitute an ex parte violation has no basis in law or Commission precedent and should be rejected forthwith. Moreover, the Commission should impose sanctions against RSAOG for abuse of the agency's processes. This is the fifth RSAOG pleading filed since November 25, 1996 to make the same groundless allegations. The Commission should not condone RSAOG's frivolous attacks, which needlessly expend the FCC's and other parties' resources.

In its Reply Comments in this proceeding, CCPR explained fully why its presentations to various Commissioners' offices and the filing of its petition did not constitute prohibited ex parte presentations. Those Reply Comments are hereby incorporated by reference into this pleading. See Reply Comments of Cellular Communications of Puerto Rico, Inc., RM-

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8897, filed December 10, 1996, at 16-20. RSAOG's attempt to equate CCPR's communications with the situation in Russell H. Carpenter Jr., Esq., 3 FCC Rcd 6141 (OMD 1988) is not persuasive. In Carpenter, the presentation found to constitute an ex parte violation involved one party's proposal to settle various cellular licensing proceedings and included details regarding payments to some parties in return for dismissal of their applications and the applicant's acquisition of interests in the winning application. Id. at 6142. While the Commission found that case to be "a close one," it was concerned that the ex parte communication could potentially influence its review of the winning application or the settlement agreement. Id.

In contrast, CCPR's presentations in this proceeding had nothing to do with the Commission's ultimate choice of a licensee for the Ceiba RSA market or any of the other five RSA markets referenced in the lottery notice. Rather, CCPR's presentations involved only the procedure by which the Commission should award these licenses. Eventually, when the Commission is called upon to review a winning application in any of these proceedings, CCPR's advocacy of an auction instead of a lottery cannot be said to have had any improper influence on the Commission.

Finally, even if CCPR's Reply Comments could somehow be construed to be directly related to the merits or the outcome of one or more of the restricted application proceedings, CCPR was not required to serve the applicants to those proceedings. As Century Cellunet, Inc. stated in its response to RSAOG's identical allegation of ex parte violations, these reply comments were filed at the direct request of the Commission and, as such, fall within the exception set forth in Section 1.1204(b)(7) of the FCC's rules for presentations "requested by

the Commission or staff for the clarification or adduction of evidence or the resolution of issues." See Opposition to Motion to Strike Reply Comments of Century Cellunet, Inc., RM-8897, filed Dec. 23, 1996 (citing 47 C.F.R. § 1.1204(b)(7)).

For the foregoing reasons, the Commission should deny RSAOG's motion promptly. Moreover, the Commission should impose sanctions on RSAOG for abuse of the Commission's processes, at least in the amount of the reasonable attorneys' fees incurred by CCPR to respond RSAOG's frivolous pleadings.

Respectfully submitted,

CELLULAR COMMUNICATIONS OF  
PUERTO RICO, INC.



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Sara F. Seidman  
Mintz, Levin, Cohn, Ferris,  
Glovsky and Popeo, P.C.  
701 Pennsylvania Avenue, NW, Suite 900  
Washington, DC 20004  
202/434-7300

Its Attorney

January 2, 1997

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**CERTIFICATE OF SERVICE**

I, Tanya Butler, hereby certify that this 2nd day of January 1997, a copy of the foregoing "Opposition to Motion to Strike Reply Comments and Request for Sanctions Against The RSA Operators Group" was served by first class mail, postage prepaid or messenger(\*) on the following:

Rosalind Allen\*  
Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20554

Eric Bash\*  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20554

ITS\*  
2100 M Street, NW  
Room 140  
Washington, D.C. 20554

Richard L. Brown  
David J. Kaufman  
Scott C. Cinnamon  
Brown Nietert & Kaufman, Chtd.  
1920 N Street, N.W.  
Suite 660  
Washington, D.C. 20036

Nancy J. Victory  
Wiley Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

  
Tanya Butler